

**APPROVED MEETING MINUTES
CITY OF MILPITAS**

Meeting Minutes:	Regular Meeting of the Milpitas City Council
Date of Meeting:	June 7, 2005
Time of Meeting:	6:00 PM Closed Session
	7:00 PM Open Session
Location:	City Hall Council Chambers
	455 E. Calaveras Boulevard

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM.

MAYOR/COUNCIL present: Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano, Livengood, and Polanski

ABSENT: None

CLOSED SESSION

Council convened to Closed Session at 6:00 PM to discuss the following:

1. **Conference with Labor Negotiator – Collective Bargaining Organizations Representing Milpitas Police Officers Association, International Association of Fire Fighters, PROTECH; regarding wages, hours, benefits, working conditions. Agency Negotiator: Art Hartinger**
2. **Conference with Real Property Negotiators, Property: 94 Winsor Avenue, Milpitas, CA, Agency Negotiators: Mark Rogge and Richard Pio Roda. Negotiating Party: Mountain Air HVAC**

**CLOSED SESSION
ANNOUNCEMENT**

Report on action taken in Closed Session:

City Attorney Mattas stated simply that direction to Council was given and Council took no action.

OPEN SESSION

Open Government Ordinance training was provided by Asst. City Attorney Richard Pio Roda at 6:45 PM.

The City Attorney answered several questions for the Council, including:

Mayor Esteves: what are the requirements for any supplemental meeting agendas now? City Attorney responded that all Council meeting items must be noticed eight days in advance of the scheduled regular Council meeting.

Councilmember Giordano: What is the status of the Terrace Gardens facility Board of Directors with regard to the Open Government requirements? City Attorney stated that its Board was subject to the noticing of meetings, and other provisions of the new law.

On the issue of City Councilmembers providing a copy of their meeting calendars, Deputy Director of Information Services Terry Medina demonstrated a sample of a working events calendar on computer that could be used by Council and Planning Commissioners. It was available on this date, and some basic training would be required.

Vice Mayor Gomez suggested that the training on the Ordinance be videotaped and then it could be shown to all the City Commissioners. Mr. Pio Roda responded that the City Attorney's office planned to pursue the recording.

Training was completed at 7:10 PM.

PLEDGE

Boy Scouts led the Pledge of Allegiance at 7:12 PM.

MINUTES

City Council Meeting Minutes of May 10 and May 17, 2005

Motion/Second: Vice Mayor Gomez/ Councilmember Giordano

Approved unanimously by a vote of: AYES: 5
NOES: 0

Minutes approved as amended by Councilmember Giordano.

SCHEDULE OF MEETINGS

The City Attorney Subcommittee meeting on June 24 at 11:00 AM was added.

Motion/Second: Vice Mayor Gomez/ Councilmember Giordano

Approved unanimously by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves made the following presentations.

Presentation

A special presentation from the Tobacco Control Coalition of Santa Clara County was given. The Coalition Against Teen Tobacco has existed since 1997. The student group has held many events, highlighting tobacco use prevention in this City. CATT stressed working with city leaders for a healthy environment for youth. One example of CATT's efforts was to seek enforcement of the rule of no more than 25% of store window coverage for tobacco and other ads. One youth suggested that the City should do undercover work with teen decoys at stores that sell cigarettes illegally to teens. Another idea promoted was to adopt an annual tobacco license fee collected by city, the money going toward enforcement. Acknowledgement was made of more smoking among the Asian community, and Milpitas has a majority of Asian residents so an emphasis was needed against smoking.

Information folders were provided to the Mayor and City Councilmembers.

Commendations

Milpitas High School Artificial Intelligence Robotics Club was introduced and recognized for its excellence in competition at the High School level. Members of the Club were presented with individual certificates of recognition and in return the club distributed lapel pins to all the City Councilmembers and staff.

Edward Lee, President of the student club, spoke at the podium and thanked his school advisors and the Mayor and Council for this public recognition.

Students:

Joy Balague
Annie Cheung
Neil Dey
Edward Lee
Kevin Ma
Robert Rocca
Maria Thomas
Eric Tse
Thien Vo
Justin Vu
John Vu
Anna Wang

Adult Helpers

Tandra De
Stephen Cox
Charles Gary
Charles Lee
Barbara Rocca
William Tse

Sponsor Groups:

Adaptec, Inc.
Tsang Family Foundation
Wells Fargo

Certificate presented earlier to: Solectron Corporation

Certificates were also prepared for
adult helpers (not attending):
Ceal Craig
Tim Craig

Certificate of Appointment

Mr. David Sandhu was presented his certificate by the Mayor as he was appointed the Parks, Recreation & Cultural Resources Commissioner, Alternate No. 1. He personally thanked the Mayor and City Council.

CITIZENS FORUM

Mr. Jay Krommenhock, 948 Horcajo Circle, of Milpitas spoke with his fourth request since 1993. His request to Council was for 4-way stop signs in front of his house. He displayed a hubcap and other debris left in front of his house.

Ms. Vivia of Milpitas, representing a humanitarian organization, *The Art of Living Foundation*, invited all Council members and the public to a seminar on stress management and the science of breath on June 17 at 7:00 PM at the Sheraton Silicon Valley in Milpitas.

Mr. Ed Connor, representing the local American Association of Retired Persons chapter, announced that Mr. Tom Francois, a local Olympic torch carrier, would speak at the AARP meeting on June 16 at the Hometown Buffet at McCarthy Ranch in Milpitas. At 1:30 PM, the Olympic torch will be at the meeting for the public to view.

Mr. Jesse Ricks of Milpitas, wished to speak on the medical marijuana issue. He was directed to come back to the podium when that topic was considered later on the agenda.

Mr. Rob Means, 1421 Yellowstone Ave, commented about national leaders and policies in the U.S.

ANNOUNCEMENTS

City Manager Lawson introduced Mary Lavelle as the new Milpitas City Clerk.

Councilmember Giordano congratulated the Milpitas Police Department for efforts in local schools with the DARE program throughout the past school year.

Mayor Esteves made the following announcements:

- Artist Brenda Trimble's flower paintings were on display at the Community Center.
- Thanked all the Milpitas school teachers and their staff.
- Recognized the Blue Dragon Tai Kwon Doe Academy, which sponsored a Northern California tournament, bringing hundreds of student contestants here.
- Congratulated the Milpitas High School honor awardees and other graduates this year.
- Congratulated the Filipino American Association of Milpitas, which held a wonderful multi-cultural show and festival, last Saturday.
- Congratulated the Soletron Corporation for sponsoring "Volunteer Day" for its employees, encouraging their workers to become involved in the community.

ANNOUNCEMENT OF CONFLICT OF INTEREST

Councilmember Livengood announced on Consent Calendar Item #7, naming Streets for a KB home development, as it was his former employer, he must abstain from voting.

AGENDA APPROVAL Item RA#6A (Supplemental Agenda): all noted that this was added to the RA Consent Calendar.

Item #1: since the City did not receive a reply from the state's Fair Political Practices Commission regarding a conflict of interest question, a motion to continue this topic to the next meeting would be appropriate, stated City Attorney Mattas.

Item #9: removed from consent, per request of staff.

Vice Mayor Gomez: on Item #5, he clarified that this was a request for a position of support on legislation, not a formal Resolution, and on Item #13 requested moving this item for discussion immediately following Public Hearings.

Councilmember Giordano: requested to comment on voting on the ordinance on Item #1. City Attorney Mattas responded to her stating she should wait until this item comes up at Public Hearing.

Motion/Second:

Councilmember Livengood/ Councilmember Giordano

Approved unanimously by a vote of:

AYES: 5

CONSENT CALENDAR

NOES: 0

Mayor Esteves called for a vote on the Consent Calendar:

Motion/Second:

Vice Mayor Gomez/ Councilmember Giordano

Approved unanimously by a vote of:

AYES: 5

NOES: 0

Consent Calendar actions were approved with the following exceptions noted:

Item #15: on utility rate increases, Mayor Esteves voted No on the adoption of the two ordinances.

Item #7: as noted above, Mr. Livengood abstained from the vote naming Streets.

Item #9: was removed from Consent as noted above.

6. Approved Budget Request From the Sister Cities Commission for Materials Supporting 2005 Tsukuba City Cultural & Student Exchange Visit: approved expenses for the Tsukuba City June 2005 cultural and student exchange from the Council's Community Promotions budget and authorized the City Manager to approve invoices not-to-exceed \$691.

7. Approved Names for Elmwood Project Public and Private Streets (SN2005-1): Applicant: KB Home South Bay Inc.

Approved by a vote of:

AYES: 4

NOES: 0

ABSTAIN: 1 (Livengood)

8. Authorized Staff to Apply Individual Donations or Sponsorships of \$1,000 or Less for Recreation Programs and Authorize Teen Center and Youth Advisory Commission Event Fees Be Used to Supplement Teen Center and Youth Advisory Commission Budget

14. Adopted Ordinance No. 268 Of The City Of Milpitas Levying Special Taxes Within The City Of Milpitas Community Facilities District No. 2005-1

Waived full reading of the Ordinance beyond the title and adopted the Ordinance No. 268.

15. Adopted Ordinance Nos. 120.43 and 208.40 of Title VIII Chapters 1 and 2 Setting Utility Rates

(1) Waived full reading of the two Ordinances.

Ordinances were adopted by the vote as follows:

(2) Adopt Ordinance 120.43 amending sections 6.13, 6.14, 6.15 and 6.16 of Chapter 1, Title VIII, of the Milpitas Municipal Code setting water rates.

Approved by a vote of:

AYES: 4

NOES: 1 (Esteves)

(3) Adopt Ordinance 208.40 amending section 6.01 of Chapter 2, Title VIII, of the Milpitas Municipal Code setting sewer rates.

Approved by a vote of:

AYES: 4

NOES: 1 (Esteves)

16. Adopted Resolution of Intention to Levy Assessment for Fiscal Year 2005-2006, Preliminary Approving the Annual Engineer's Report and Providing for Notice of Public Hearing: Landscaping and Lighting Maintenance Assessment District No 98-1, Sinclair Horizon, Program 9489.

17. Adopted Resolution of Intention to Levy Assessment for Fiscal Year 2005-2006, Preliminary Approving Annual Engineer's Report and Providing for Notice of Public Hearing: Landscaping and Lighting Maintenance Assessment District No 95-1, McCarthy Ranch, Program 9474.

18. Approved the First Option Year of the Contract with Prolific Screen Printing for the Annual Public Works Garment Purchase – to purchase 1,799 garments not to exceed \$20,700.65.

19. Awarded the Bid for Community Center Furniture to: to Del Gavio Group for tables - \$3,404, and to Auditoria California for chairs - \$27,354.30.
20. Awarded the Bid for Printing the Milpitas Activity Guide to Milpitas Post for \$20,846.13.
21. Amended the Master Services Agreement With Gregory B. Bragg & Associates To Extend The Current Agreement Through October 31, 2005 And Increase The Contract Amount Based Upon An Additional Four (4) Months Of Monthly Billings.
22. Amended the Master Services Agreement With Peelle Technologies To Increase The Contract Amount By \$11,700 For Implementation Services Required To Complete A Software Upgrade To The City's Document Imaging System (Project No. 8131).
23. Approved the Renewal Of Annual Software Support And Maintenance Fees With Various Vendors Through June 2006: payment of the annual software support and maintenance fees to Actuate Corporation for the Finance System tracking and reporting in the amount of \$15,298.00, Granicus for Web Streaming City Council and Planning Commission Meetings in the amount of \$9,000.00; Motorola for the Mugshot Instant Image System in the amount of \$3,489.98; Northrop Grumman for Water Meter Reading Hardware and Software in the amount of \$2,115.96; and, to Peelle Technologies, Inc. for the Document Imaging System in the amount of \$20,005.68.
24. Approved Plans and Specifications and Authorize the Advertisement for Bid Proposals: 2005 ADA Sidewalk Ramps (Project No. 4226).
25. Approved Release of Retention: HMH Incorporated, Montague Expressway Widening Project No. 4179, in the amount of \$56,211.62.
26. Authorized the Rejection of All Bids for the Berryessa Pump Station, Project No. 8138, and to Negotiate with Suppliers in conformance with Public Contracts Code Section 20166.
27. Authorized the City Manager to Execute an Agreement Amendment: Harris & Associates, Milpitas Library Off Site Utility Improvements, Project No. 8153, in an amount not to exceed \$18,000.
28. Approved Payment Requests to the following Vendors and Contractors:
 1. \$8,679.80 to L.N. Curtis & Sons for four (4) M-40 Industrial Scientific gas detectors and pumps. Staff requested that the equipment be purchased as a sole source procurement.
 2. \$7,109.95 to Spectracom for the purchase of a GPS Master Clock. The work was performed as an emergency under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent."
 3. \$5,500.00, to Maximus for preparing and filing the State Controller's Annual Financial Report and Street Reports for the Finance Department.
 4. \$7,800.00 to Mark Thomas to provide surveying/plat & legal description/civil engineering services for a lot line adjustment for the main sewer pump station land survey.
29. Approved a Budget Appropriation for Building Improvements, Project No. 8135, of \$100,000.
30. Authorized the Purchasing Agent to Dispose of Two Surplus Police Vehicles at Auction.

PUBLIC HEARINGS

1. Introduce Ordinance No. 124.27 Amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning and Annexation) and Amending Chapter V-500 (Neighborhood Beautification) of the Municipal Code to Enhance the Code Enforcement Program (P-ZT2004-2)

Acting Planning Director Tambri Heyden requested that the Ordinance be continued to a future agenda, possibly June 21. The request was due to the fact that an advice letter requested from the state Fair Political Practices Commission had not yet been received (regards inquiry on potential conflict of interest of Councilmembers), even though it was anticipated.

Councilmember Giordano questioned an incorrect statement made about this fact in the Milpitas Post newspaper. She was concerned that the date was published for public hearing, and asked that in the future

staff wait for letter to be received before putting it on agenda. Councilmember Livengood supported this point also, with concern for the cost of advertising the public hearing in the newspaper.

Mayor Esteves called for a vote on the motion to continue this Public Hearing to a future Council meeting, once the FPPC advice letter is received by the City, and it is noticed in the newspaper as required.

Motion/Second: Councilmember Livengood/ Councilmember Giordano

Approved unanimously by a vote of: AYES: 5
NOES: 0

2. Approve Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) Application to Create Two Parcels, Located at Corner of Abel, Main and Great Mall Parkway and Create 481 Condominium Units (APN's: 086-12-015, 016, 020) Zoned R4-TOD (multi family very high density with a transit oriented overlay): Applicant: Fairfield Residential LLC

Ms. Heyden announced that the public hearing was requested to remain open and to continue this matter to the next scheduled Council meeting on June 21 meeting, at the request of the applicant.

Motion/Second: Councilmember Giordano / Vice Mayor Gomez

Approved unanimously by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

13. Consider Request from Milpitas Alliance for the Arts for the City to Contribute \$10,000 to be Used for Future Art in Your Park Projects

Recreation Manager Bonnie Greiner introduced Ms. Julie Cherry, President of Milpitas Alliance for the Arts, who requested City Council allocate \$10,000 toward the "Art in Your Park" project at Starlight Park. Ms. Cherry asked Councilmembers to find value in the art project by funding the project, which was in the planning stages. Ms. Cherry's assistants demonstrated three models of the potential public art project, under consideration: (1) a 12 ft. high mosaic pole with a circle bench around it; (2) Starlight as a bench - a framed star bench with a raised planet in the center with themes of the universe; and (3) Starlight Gates - a 9 ft. tall post with ceramic tiles to replace existing benches.

Ms. Cherry requested that Council fully fund the \$10,000 needed for the art project, and that funds be allocated from the 2004-05 budget.

Councilmember Polanski inquired how soon this project would come to fruition. Ms. Cherry responded that after a final tally of public votes on the three choices, it would go to the Public Arts Committee in June, then return to the City Council in July or August. Typically, it would take three months for the artist to create the piece and have it installed, before the official unveiling occurs.

Vice Mayor Gomez asked if there were anything to preclude City Council from voting that funds explicitly come out of the \$125,000± for arts in general (rather than CIP or other budget section) and to request an advisory vote by the Council? City Attorney Mattas responded it would be acceptable to allocate some funds from that specific line item of the new budget now that it was adopted.

With regard to the new Public Arts Committee (PAC), Mayor Esteves expressed that it would need a project, and hoped Starlight Park would be a possibility. The new Committee could give input on this specific project, underway now. His belief was that funding would not be an issue, based on past history of Council action with regard to public art. Ms. Cherry said she was comfortable with the Council commitment to this project.

Vice Mayor Gomez moved the following action: forward the \$10,000 request from Alliance for the Arts to Public Arts Committee ("PAC") for its approval, then to return to the City Council in July with an updated request specifying that funds come from the Arts funding in the adopted FY 2005-06 budget.

The Mayor called for a vote on the motion stated above.

Motion/Second: Vice Mayor Gomez/Councilmember Polanski

Approved unanimously by a vote of: AYES: 5

JOINT REDEVELOPMENT AGENCY/CITY COUNCIL MEETING

RA1. Call to Order by the Mayor: the RA meeting was called to order at 8:26 PM.

RA2. Roll Call: All Agencymembers were present.

RA3. Approval of Minutes of the meeting of May 17, 2005

Motion/Second: Agencymember Livengood/ Agencymember Giordano

Approved unanimously by a vote of: AYES: 5
NOES: 0

RA4. Approval of Agenda

Councilmember Giordano requested to remove Item #6 from Consent.

Motion/Second: Agencymember Livengood/ Agencymember Giordano

Approved unanimously by a vote of: AYES: 5
NOES: 0

RA5. Receive Progress Report On Design of the Library and the Midtown East and West Parking Garages (Project Nos. 8162, 8161, & 8170)

Principal Engineer Mark Rogge reported on the progress of the library project with dates, expenditures, and timelines. The parking concept with the most support, was one with an express ramp for Midtown East Parking Garage, which would be approximately 35 ft tall. Initial cost plans were being developed by the architect and consultant. Those will be brought back to the Council subcommittee. He mentioned the possibility for future expansion was also considered.

Mr. Rogge explained the layout of the parking concept, with 275 parking spaces as a requirement for the County health center. He planned to return to the City Council in July with further update on the library specifically and with a detailed cost plan for the parking garages.

A motion was made to receive the progress report, and the voting was as follows:

Motion/Second: Vice Chair Gomez/ Agencymember Polanski

Approved unanimously by a vote of: AYES: 5
NOES: 0

RA6. Final Acceptance of the 2005-2006 Operating Budget and Capital Improvement Program

This item was removed from the consent calendar. Finance Director Emma Karlen reviewed the history of the budget process to date.

Councilmember Giordano asked her colleagues for direction to the Finance Subcommittee. It met twice looking for cost savings to date. At this meeting, she specifically identified three areas that she wished to seek funding for (if cost savings were identified): CASP, Youth Sports activity, and Child Care. She requested that Council provide that the Finance Subcommittee look for opportunity to re-instate grant moneys for these three program areas in the City budget.

A motion was made to adopt and approve the following:

1. Resolution adopting the FY 2005-06 Appropriations Limit of \$53,879,417 for the City of Milpitas,
2. Joint Resolution of the City and Redevelopment Agency approving the City's Final FY 2005-06 Budget of \$143,021,842,
3. Joint Resolution of the Milpitas Redevelopment Agency and the City of Milpitas making findings following a Public Hearing for use of Redevelopment funds,

4. Resolution of the Milpitas Redevelopment Agency authorizing payments to the City of Milpitas pursuant to the Second Amended and Restated Public Works Agreement,
5. Resolution of the Milpitas Redevelopment Agency determining that the planning and administration expenses to be funded in FY 05-06 by the Housing Reserve Fund are necessary for the production, improvement and/or preservation of affordable housing for the low and moderate-income households,
6. FY 2005-06 Capital Improvement Budget of \$33,402,713, and
7. Five-Year Capital Improvement Program for the Fiscal Years 2005-06 through 2009-10 of \$125,705,713.

Ms. Giordano's motion further directed the Finance Subcommittee to seek cost savings opportunities to potentially fund priorities of Cultural Arts Support Program, Youth Sports and Child Care activities.

Motion/Second: Agencymember Giordano / Agencymember Livengood

Approved unanimously by a vote of: AYES: 5
NOES: 0

*** RA 6A: Adopt Ordinance No. 269, an Ordinance of the Milpitas Redevelopment Agency repealing Ordinance No. 192.6 in its entirety.**

The ordinance was adopted on the consent calendar.

Waived Second Reading beyond the Title for Ordinance No. 269, and Adopted Ordinance No. 269 which repeals Ordinance No. 192.6 "An Ordinance of the Milpitas Redevelopment Agency Amending Ordinance No. 192.5 Relating to Sales and Use Tax" in its entirety.

RA7. Agency Adjournment - Redevelopment Agency meeting was adjourned at 8:53 PM.

REPORTS OF OFFICERS AND BOARDS

City Council

3. Approve Mayor's appointments to the Library Commission, Citizens Emergency Preparedness Advisory Commission, and Open Government Commission: Consider Mayor's Request to Extend Public Outreach for Persons Interested in Being Commissioners on the Open Government Commission until June 9, 2005 for Appointment June 21, 2005

The Mayor noted that his recommendations and those of the Council Subcommittee on Appointments for CEPAC and the Library Commission were the same. He then asked if any members of the audience wished to speak on the appointments.

Mr. Russ Cherry, Chairman of the CEPAC, made a request that any appointments could be "run through" the Commission chair. He wished to know if the potential Commissioners had an "emergency management" point of view that he believed necessary. He further asked the Mayor to hold off on appointments scheduled on the agenda. Mr. Cherry also inquired about the status of amended by-laws (worked on more than one year ago) for CEPAC.

A motion was made to appoint Commissioners as follows:

Citizens' Emergency Preparedness Advisory Commission

Appoint Clifford Baughn as the Industry Representative with a term expiring in June 2008.
Appoint John Pilger from Alternate No. 1 to an existing vacancy with a term expiring June 2007.
Appoint Nancy Gampon to Alternate No.1 position from Alternate No. 2 with a term expiring June 2007.
Appoint William Nolan to the Alternate No. 2 position with a term expiring June 2007.

Library Advisory Commission

Appoint Yu-Lan Chou from Alternate No. 1 to an existing vacancy with a term expiring June 2006.
Appoint Lynne Estandarte from Alternate No. 2 to an existing vacancy with a term expiring June 2006.
Appoint Elpidio Estioko to the Alternate No. 1 position with a term expiring June 2007.
Appoint Ha Phan to the Alternate No. 2 position with a term expiring June 2007.

Motion/Second: Councilmember Polanski/ Vice Mayor Gomez

Approved unanimously by a vote of: AYES: 5
NOES: 0

Open Government Commission

Appoint Denny Weisgerber to an existing vacancy with a term expiring June 2007.
Appoint Tom Valore to an existing vacancy with a term expiring June 2007.
Appoint Jim Rabe to an existing vacancy with a term expiring June 2007.
Appoint Dinnah Casibang to an existing vacancy with a term expiring June 2007.

Mayor Esteves moved to appoint four Commissioner as noted.

Separately, Mr. Livengood made a motion to reject the Mayor's suggested appointments. He preferred a motion to appoint the Council Subcommittee on Appointments' recommended five applicants to the new Commission.

A great deal of discussion was held regarding the number of Commissioners to be appointed (4 or 5), whether the Mayor maintained sole discretion to make the appointments with Council consensus, and whether the other members of the City Council could demand that all appointments be made at this meeting as agendized, contrary to the Mayor's recommendations (substituting the Council Subcommittee's recommendations for the Mayor's).

Councilmember Polanski seconded the Mayor's original motion.

Councilmember Giordano supported appointment of five Commissioners at this meeting and seconded the motion by Mr. Livengood. After direction from the City Attorney, Mr. Livengood's motion was withdrawn in order that a vote could be called on the first action.

Mayor Esteves called for a vote to appoint four Commissioners as noted above:

Motion/Second: Mayor Esteves/ Councilmember Polanski

Motion failed by a vote of: AYES: 2 (Esteves, Polanski)
NOES: 3

Councilmember Livengood then moved to appoint Mr. Rabe and Ms. Casibang to the Open Government Commission, and that the Mayor return to the pool of applications submitted to select three more persons for appointment at the next City Council meeting. He further expressed his potential desire to explore City rules, municipal code and state law to determine whether or not the Vice Mayor and City Council could make Commission appointments when the Mayor did not do so, as scheduled.

The motion was seconded by Vice Mayor Gomez.

Mayor Esteves called for a vote to appoint two Commissioners to the Open Government Commission - the two applicants on which the Mayor's and the Council Subcommittee's recommendations agreed.

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

At 9:36 PM, the City Council took an announced 10-minute break. The meeting resumed at 9:47 PM.

4. Request for Donation: Child Spree Program Sponsored by Milpitas Kiwanis and Mervyn's

Three Kiwanis Club gentlemen spoke to the Council to request \$1,500 as a donation toward the summer time program known as Spree. 70 – 100 children could participate in this recognized program to go to Mervyn's to buy new clothes before the new school year begins, with this assistance. In addition, the Kiwanis Club distributed an invitation to the "Tee Off for Kids" Golf Tournament on July 23.

Motion/Second: Councilmember Giordano / Councilmember Polanski

Approved by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

5. Consider Resolution of Support for AB 985, California Reservists Job Security

Vice Mayor Gomez reiterated that he was requesting a vote of support for this Assembly Bill (not by resolution), which would prohibit an employer discharging or discriminating against an employee for taking time off to perform active military duty as a member of the militia of this state. Assemblyman Alberto Torrico introduced the bill in Sacramento.

Motion/Second: Vice Mayor Gomez / Councilmember Livengood

Approved unanimously by a vote of:

AYES: 5

NOES: 0

NEW BUSINESS

9. Receive Status Report on the North San Jose Development Policies Update

This report was removed from the Consent Calendar.

Acting Planning Manager Tambri Heyden stated that the approval sought for the project was different than what was stated in the agenda packet.

This evening in San Jose, the Planning Commission was scheduled to adopt the Final EIR on this topic. Ms. Heyden requested that Council action this evening be: to provide final comment letter to the San Jose Planning Department – with specific comment on traffic and sewage issues. Mitigation should be provided on those two items specified. In addition, Ms. Heyden sought approval from the Milpitas City Council to file an appeal of the San Jose Planning Commission's decision to approve the EIR to the San Jose City Council.

A motion was made to present issues in a final comment letter on the North San Jose Development Policies Environmental Impact Report and to authorize the filing of an appeal to the San Jose City Council of its Planning Commission's approval of the EIR without appropriate mitigations on traffic and sewage issues relevant to the City of Milpitas.

Motion/Second: Councilmember Livengood/ Councilmember Polanski

Approved unanimously by a vote of:

AYES: 5

NOES: 0

10. Financial/Statistical Reports Relating to Salary and Benefits Compensation, Salary and Benefits Surveys, and General Fund Projection for the Next Three Years

Finance Director Emma Karlen referred to the information prepared and reported to Council:

- 1) A schedule showing the salary and benefits percentage increase from FY 02-03 to FY 04-05. The schedule uses FY 01-02 as the base year and calculates the percentage increase each year as compared to the previous year for both salary only and salary and benefits combined. The schedule also projects percentage increase for FY 05-06, assuming no salary increases for those employee groups whose MOUs expire on June 30, 2005.
- 2) A report showing longevity pay and the number of eligible employees for FY 04-05. The report also projects longevity pay for FY 05-06 and FY 06-07.
- 3) An Overtime Report by department as of March 31, 2005.
- 4) A schedule comparing Milpitas salary and benefits to ten other similar size cities within the Bay Area for selected positions. Schedule was prepared and provided by Human Resources Dept.
- 5) A survey of the same ten cities regarding provision of longevity pay. This survey was conducted and provided by Human Resources Department.
- 6) A survey of personnel cost budget of other neighboring cities.
- 7) A schedule showing personnel cost budget trends for the City of Milpitas in the last nine years.
- 8) General Fund Three year Projection for FY 05-06 through FY 07-08 (working draft only). The assumptions for the projection are listed at the bottom of the schedule.
- 9) A list of unfunded programs or services from each department due to reduced funding.

Mayor Esteves thanked Ms. Karlen for the important data provided.

Councilmember Polanski moved to receive and file the staff report on salary and benefits.

Motion/Second: Councilmember Polanski / Councilmember Giordano

Approved unanimously by a vote of: AYES: 5
NOES: 0

11. Request Further Direction From Council As To Whether City Commissions, Boards, Committees And Other City “Policy Bodies” Should Be listed In The City Council Handbook As An Appendix Which Describes Each Policy Bodies’ Primary Functions

Recommendation from the City Attorney:

1. Direct staff to prepare an Appendix to the City Council Handbook listing all City Commissions, Boards, Committees and other policy bodies, including information as to the number of members and a description of each policy bodies’ primary functions.
2. Direct staff to submit such an Appendix for Council’s review and approval at a subsequent Council meeting.

City Attorney Mattas presented the recommendation, as a follow-up to the topic which arose at a prior Council meeting. Staff sought direction from the City Council regarding inclusion of additional information in the City Council Handbook.

Councilmember Polanski stated this was an excellent suggestion. She also added that updated By-Laws of each Commission should be included in handbook also.

Councilmember Polanski moved to recommend staff as noted above, and also to include all Commission By-Laws in the Council handbook.

Motion/Second: Councilmember Polanski / Vice Mayor Gomez

Approved unanimously by a vote of: AYES: 5
NOES: 0

12. Request Further Direction From Council As To Whether (1) the City Should Draft for the Council’s Consideration a Zoning Ordinance Amendment Temporarily Prohibiting Medical Marijuana Dispensaries in the City to Allow Staff Time to Further Study the Issue; or (2) Draft an Ordinance Regulating Medical Marijuana Dispensaries in the City of Milpitas

City Attorney Mattas described that the Council could either adopt an interim ordinance to allow for time to consider the process while prohibiting medical marijuana dispensaries, or Council could provide instruction to move forward on a specific ordinance permitting such businesses. Mr. Mattas mentioned the previous day’s announcement by the U.S. Supreme Court (a case of state v. federal law), stating that the Supreme Court decision did not invalidate California’s Proposition 215, which supported medical marijuana, and the Court’s decision was not relevant to the placement of marijuana dispensaries. He also mentioned that there was Congressional activity pending on enforcement too.

City Attorney Mattas identified three possible courses of action for the Council tonight:

- 1) Take no action at this time,
- 2) Return to Council with a moratorium (if more than 45 days, notice Public Hearing),
- 3) Finish the ordinance as drafted, go to Planning Commission, then City Council for approval.

The Mayor asked if members of the audience wished to speak on this item.

Donald Irving, Milpitas resident since 1959. He felt compelled to act. He does not want the City Council to avoid this topic for one year. He asked Council to act in a professional way to handle this topic now and to act responsibly and respectfully.

Rob Means, 1421 Yellowstone, mentioned young people who spoke earlier on tobacco use prevention, and claimed that the abuse of marijuana yields no death each year. Nine years have passed since California's Proposition 215 passed statewide.

Gibran Kadil, of San Jose, stated it's time to act, medical marijuana helps people, and Council needs to help citizens, "let's do it and say yes," he said.

Chris Conrad, of El Cerrito, recognized cannabis expert, referred to today's newspaper's stories on medical marijuana. The US Supreme Court pleads with Congress to handle this issue. Pharmacies can't issue this medicine. SB420 bill in CA is pending. The City has authority to regulate tax revenues for City and reduce risks to patients with a licensed facility. Referenced Health and Safety codes. Mentioned a federal bill, about removing money for enforcement of federal drug actions.

Paul G, (no residence city provided), a cancer survivor, stated he operates a medical marijuana dispensary in unincorporated Alameda County. He provided numbers of up to 300 patients would need safe access to marijuana in the Milpitas area. A properly run, licensed facility would be an asset to the City. He reported no problem with police agencies for his business. He also mentioned tax revenue for the City.

Jesse Ricks, Milpitas resident of 35 years, said young people were disenfranchised, some were in jails; people who paid dues will be disenfranchised including the young, poor, ethnic minorities. He asked that Council grandfather nonviolent people into a program, and help them to make money in a legal way.

Doug Bolanga, San Jose, asked for support of a medical marijuana dispensary here in Milpitas. He suggested Council work with Don Irving and others in town. Access for patients who need the marijuana product was important.

Marni Reagan, north San Jose, asked Council to enact an ordinance to regulate the dispensaries, and distributed the CA Attorney General's statement regarding the recent U.S. Supreme Court decision. She asked that the ordinance allow opening a dispensary as a non-profit organization, stressing safe access to medicine.

Chris Erlinger, San Jose, stated he was a patient who needed this type of medicine. He would rather buy medication here in Milpitas for this product, if available, than traveling to outside cities/counties to buy it.

Richard Steve, San Jose. He stated that he drives through Milpitas to go to Alameda County to buy his medicine. He would prefer a clean, safe location nearby to buy this product.

Mayor Esteves requested comment from the Police Chief. Chief Nishisaka had that day read a report from his staff, indicating there were no dispensaries in any city in Santa Clara County. He mentioned that Police was short on staff, so currently there was no time to address this issue. Chief stated that as a long time member of the Police department in this City, he did not think Milpitas was ready for medical marijuana dispensary at this time.

Councilmember Livengood stated that he did not want to get into a debate about the value of medical marijuana and qualities of it for treating illness. He said the issue for the City was about helping to zone the City, taxation, and location of dispensary. Furthermore, Mr. Livengood was scared to hear a comment that Milpitas might need three to four dispensaries in this small city. He held concern for where they would operate. He said he doesn't want police or other problems. He did not want Milpitas involved in this issue at this point, strictly looking at it from a zoning point of view.

Mayor Esteves stated that medical marijuana could be an issue of health and hospital concerns, possibly a county issue. He felt Milpitas was not ready to handle this type of dispensary and would entertain a moratorium. He also expressed concern about secondary effects of marijuana smoke.

The Mayor then called for a vote on the second policy option provided by the City Attorney: to Draft for the Council's Consideration a Zoning Ordinance Amendment Temporarily Prohibiting Medical Marijuana Dispensaries in the City to Allow Staff Time to Further Study the Issue. The motion also included, by Vice Mayor Gomez, the request not to bring this topic back to Council until its July meeting.

Motion/Second: Vice Mayor Gomez/ Councilmember Livengood

Motion carried by a vote of: AYES: 4
NOES: 1 (Polanski)

ADJOURNMENT

Mayor Esteves adjourned the meeting at 10:43 PM.

The foregoing minutes were approved by the City Council as submitted on June 21, 2005.

Mary Lavelle, City Clerk